

assets of the assessee and that aspect of the question was not at all considered by the Privy Council. It is not, therefore, necessary to express any opinion on the correctness or otherwise of that decision in this case.

Having regard to all the circumstances adverted to above, it is, therefore, clear that the payment of Rs. 26,000 received by the assessee from the producers was in consideration of the surrender by the assessee of the capital assets which it had acquired from the producers under the three agreements in question and constituted a capital receipt not liable to tax for the assessment year 1946-47. The answer given by the High Court to the referred question was, therefore, correct and I would dismiss the appeal with costs.

ORDER.

BY THE COURT:—In accordance with the Judgment of the majority, the appeal is allowed with costs throughout.

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v.

THE STATE OF HYDERABAD.

[VIVIAN BOSE and CHANDRASEKHARA AIYAR JJ.]

*Crime, perpetration of—A person present but not aiding or abetting—Whether principal or accessory—Corroboration of the statement of a single witness against accused—What the law requires.*

There is no warrant for the extreme proposition that if a man sees the perpetration of a crime and does not give information of it to anyone else, he might well be regarded in law as an accomplice and that he could be put in the dock with the actual criminals.

A person may be present, and, if not aiding and abetting, be neither principal nor accessory; as, if A, happens to be present at a murder and takes no part in it, nor endeavours to prevent it, or to apprehend the murderer, this course of conduct will not of itself render him either principal or accessory.

*Russell on Crime*, 10th Edition, p. 1846, referred to.

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In the matter of corroboration of the evidence of a single witness against the accused what the law requires is that there should be such corroboration of the material part of the story connecting the accused with the crime as will satisfy reasonable minds that the man can be regarded as a truthful witness. The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime. The nature of the corroboration will depend on and vary according to the particular circumstances of each case.

*Rex v. Baskerville* (1916) 2 K.B.D. 658, referred to.

**CRIMINAL APPELLATE JURISDICTION: Criminal Appeals No. 28 to 31 of 1955.**

Appeals by special leave from the judgment and order dated the 11th February, 1953 of the Hyderabad High Court in Criminal Appeals Nos. 1260 to 1263 of 1951/1952 arising out of the judgment and order dated the 6th November, 1951 of the Court of the Sessions Judge at Warangal in Original Criminal Case No. 127 of 1950.

*H. J. Umrigar*, for appellant No. 1.

*K. R. Choudhry*, for appellants Nos. 2 to 4.

*Porus A. Mehta* and *P. G. Gokhale*, for the respondent.

1956. March 14. The Judgment of the Court was delivered by

CHANDRASEKHARA AIYAR J.—The four appellants and two others named Sheshaya and Pitchi Reddy, who are all communists, were charged with the murder of one Venkatakrishna Shastry who was a Congress worker or leader.

The appellants were convicted of the offence but the other two were acquitted by the Sessions Judge, Warangal, Hyderabad State, on the astounding ground that no overt acts were proved against them. The appellants preferred appeals to the High Court at Hyderabad and there was the usual reference for confirmation of the death sentences imposed on them. The appeals were heard by a Bench consisting of Deshpande J. and Dr. Mir Siadat Ali Khan J. and

they disagreed with each other. Deshpande J. held that the evidence did not establish the guilt of the appellants and he acquitted them. On the other hand, Dr. Mir Siadat Ali Khan came to the conclusion that the prosecution had established its case beyond reasonable doubt. He confirmed the convictions but reduced the sentences to imprisonment for life. Owing to this difference of opinion, the matter was referred to a third Judge, Manohar Pershad J. and he agreed with the finding of guilty given by his learned brother Dr. Mir Siadat Ali Khan. We granted special leave to the appellants to come before this court.

The facts of the occurrence, as alleged by the prosecution, are these. On the evening of 19-1-1949, the deceased Venkatakrishna Shastry of the village of Maturpeta and five other persons, who were Congress workers like him, were returning to the village from a tank. One of the communist leaders called Nagabhushan Rao had been arrested a month or two previously and the communist party believed that Venkatakrishna Shastry was responsible for the arrest. So a large group of communists, about 25 or 30 in number including the accused, armed with guns and swords, paid a visit to Maturpeta to wreak vengeance against the Congress group led by Venkatakrishna Shastry. They ran into the Congress group as they were getting back to the village after the evening stroll. P.W. 14, a *dhobi* boy named Gopai was one of the camp followers of this communist group. Venkatakrishna Shastry and his co-workers were tied up with their own clothes and were led to the village *chavadi* over which a Congress flag was flying. A rope was brought from the house of P.W. 17 and the members of the Congress group were tied with this rope and led some distance away from the village to a red-gram field, and all of them were beaten by their enemies; except Shastry, the rest were driven away from the place. Shastry was tied with the rope and taken in the eastern direction by Mangapaty (the *dalam* or troupe leader) and the accused. P.W. 14 was following the group carrying a bundle of their clothes on his head. After a short halt at the village of

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Suknevedu, where some food was taken, the party went towards a mango-tope near a brook, four or five miles away leading Venkatakrishna Shastry as the captive. The deceased, Gopai (P.W. 14) and some of the accused remained on the bank of the brooklet. The others went a little beyond and one of them came back with orders that Venkatakrishna Shastry should be fetched. Venkatakrishna Shastry was taken along and when the moon was at the meridian, the rope with which he was led was tied round the neck of the deceased into a noose. Two of the accused pulled one end of the rope and two others at the other end in opposite directions. Venkatakrishna Shastry was thus strangled to death. A pit was dug and the body of Venkatakrishna Shastry was buried in the river-bed. P.W. 14 saw all this from a distance of twenty yards in clear moonlight.

Two or three days later, after some wanderings in the jungle and mountain-dens P.W. 14 left the company of his masters who were implored by the boy's father P.W. 7 to permit him to take the boy away.

Next morning a report was sent by P.W. 2 the police patel about the abduction of Venkatakrishna Shastry and investigation was begun. On 8-2-1949, that is about twenty days after the occurrence, some bones of a human-body were discovered in the river-bed as the result of crows and vultures hovering round the place. The police Patwari (P.W. 10) sent a report about this discovery. The police arrived on the scene and exhumed the body which was identified as that of Venkatakrishna Shastry. This was on 9-2-1949. It was sent for post-mortem examination. The condition in which the body was at the time of exhumation is stated in a *panchnama* that was then prepared. The results of the post-mortem examination are spoken to by the doctor P.W. 7.

Being the only witness for the commission of the crime, the *dhobi* boy (P.W. 14) was subjected to severe criticism by Mr. Umrigar who held the dock brief for the appellants. He described him as an accomplice and as an unmitigated liar and he asked us not even to look at his evidence. P.W. 14 does not satisfy the

definition of an accomplice; he falls somewhat short of the requirements which would confer on him this status. According to the evidence, he left his parents' roof after a quarrel with his father and while wandering in the jungles he was picked up by the communists only 3 days before and taken as their servant on promise to give him food. His main duty appears to have been to go with the group carrying their bundles of clothes on his head. It was in this capacity that he was not only able to see the abduction of the deceased but also to witness the actual murder. He took no part whatever in the commission of the offence or in any active or passive preparations for the same. He was not a *particeps criminis*. After securing his release from his temporary masters, he went back with his father to the village. It is true he did not divulge the secret of the murder to any one else except to his own father. But who would, in view of the atrocities and terrorism that prevailed in that region during the relevant time? It required a very courageous man to have proclaimed the truth, needless of consequences to himself, and we cannot credit the *dhobi* boy with so much of fearlessness. The learned counsel urged that if a man sees the perpetration of a crime and does not give information of it to anyone else, he might well be regarded in law as an accomplice and that he could be put in the dock with the actual criminals. There is, however, no warrant for such an extreme proposition. On the other hand, the following short passage from Russell on Crime, 10th Edition, page 1846, will show its untenability:—

“But a person may be present, and, if not aiding and abetting, be neither principal nor accessory; as, if A, happens to be present at a murder and takes no part in it, nor endeavours to prevent it, or to apprehend the murderer, this course of conduct will not of itself render him either principal or accessory”.

Indeed, there can be no doubt that the evidence of a man like P.W. 14 should be scanned with much caution and we must be fully satisfied that he is a witness of truth, especially when no other person

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was present at the time to see the murder. Though he was not an accomplice, we would still want corroboration on material particulars in this particular case, as he is the only witness to the crime and as it would be unsafe to hang four people on his sole testimony unless we feel convinced that he is speaking the truth. Such corroboration need not, however, be on the question of the actual commission of the offence; if this was the requirement, then we would have independent testimony on which to act and there would be no need to rely on the evidence of one whose position may, in this particular case, be said to be somewhat analogous to that of an accomplice, though not exactly the same. What the law requires is that there should be such corroboration of the material part of the story connecting the accused with the crime as will satisfy reasonable minds that the man can be regarded as a truthful witness. In the leading case of *Rex v. Baskerville*<sup>(1)</sup> it was pointed by Lord Reading C.J. that "the corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime. The nature of the corroboration will depend on and vary according to the particular circumstances of each case. What is required is some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it.

Judged by this test, we can say that the evidence given by P.W. 14 has been amply corroborated. It was not disputed for the appellants that there is abundant evidence consisting of the testimony of several witnesses in support of the truth of the narrative given by P.W. 14 regarding the abduction of the deceased. This evidence was given not by mere on-lookers but by men like P.Ws. 3, 4, 5, 6 and 9, who were with the deceased when the communist group came upon them and who were themselves badly beaten up by the gang before being released from impending death at the merciful intervention of

(1) [1916] 2 K.B.D. 658

some one of them. They say that at the time of the release the accused retained the deceased with them and took him away in the direction of Mulgupad.

From this stage, P.W. 14 takes us to the river bank where the deceased and he were allowed to sit. The accused went into the river bed and later on orders were issued by the appellant No. 1, the deceased was led by a rope from the bank by Muthyalu (4th appellant). The rope was tied round the neck of the deceased into a noose and pulled in opposite directions by two of the accused on each side and Shastry was thus strangled to death. His body was buried in a pit dug in the river bed. The rope which was found round the neck of the dead body when it was exhumed is said to be the rope with which P.Ws. 3 to 6 and 9 were tied up and as the one that the members of the gang brought from the house of Silam Brahma-reddi (P.W. 17) earlier that evening when the village was raided and the Congress workers were marched to the Congress flag.

There is also evidence that the party of the accused when they first encountered the party of the deceased asked who and where was Venkatakrishna Shastry. The assailants, who were armed to the teeth, indulged in threats to kill all of them. The deceased was a Congress leader and it is not surprising that he was singled out for terrific punishment, while the others were let off with a good thrashing and admonitions that they should give up their Congress affiliations. It is but natural in the circumstances that they should take away the deceased to a distant place to do away with him. That he was so led by the group of the accused is also corroborated by the evidence of Yesob (P.W. 12) who was watching his *jawar* crop on the night in question in a neighbouring field.

Let us now turn to the exhumation of the dead body, the inquest report, the post-mortem certificate, and the evidence of the doctor (P.W. 7). The *patwari* of Sakrivedu (P.W. 10) sent a report on the 8th February, 1949, that he had information that a dead body lay buried in the river-bed. The report has not

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been filed but its purport about the condition of the body is given in the inquest report as unidentifiable. Two police sub-inspectors and some constables reached the river-bed the same day and exhumed the body. Its then condition is described in these words in the inquest report:

“It was noticed that a rope of Chinna and Ambara was wrapped from neck to the waist. Both hands were missing and out of the two legs one was attached to the body with little flesh. The bones of the other separated leg (the down part of the knee) and the bones of one hand were found in the pit. There were some hairs in the head. The flesh of the face was rotten and decayed. Teeth are safe and sound. There is rotten flesh from the neck to the buttocks. It appears that this dead body is of a Hindu Brahmin”.

The *panchnama* is signed by two persons, one of whom HAS BEEN EXAMINED AS P.W. 16. He, along with the witnesses who gave evidence as co-sufferers with the deceased in the communist raid of that evening, have identified the body as that of Venkatakrishna Shastry. The doctor's post-mortem certificate is exhibit 2 and according to it the body was putrified and even the marks of strangulation could not be detected; both the palms had been cut out, the left hand was severed completely; there was only the left eye in a rotten condition; the right eye was not found, the right ear was not there. Examined as P.W. 7, the doctor has said that the face of the corpse could not be identified, as the scalp was eaten away by mud, and the bony structure of the face was present.

In the face of this evidence, the learned counsel for the appellants contended with much force that identification must have been impossible and that the witnesses who speak to the same should be disbelieved. Two factors are, however, overlooked in this argument. Though the body was in an advanced state of decomposition and many parts of the limbs were missing and even the flesh in the face was gone, it would not have been difficult for close associates of



Venkatakrishna Shastry to say that it was his corpse, from the general features form, outline, contour build of the body, and the appearance of such of the limbs as were available to see. His friend Madhusudhana Rao, P.W. 15, was working with the deceased for some years in the Congress office and knew him well indeed. There is his evidence about identification. More important still is the identification of the rope round the neck of the body, the *dhoti* with the violet border that was on its waist, and the *janjam* or the holy thread. The rope was brought from the house of Brahma Reddy (P.W. 17). It was the one which was tied in loops round each member of the Congress group as they were led from the village to the red-gram field; it was the rope that was used to lead Venkatakrishna Shastry to the brooklet; and it was the rope that was found round the neck of the dead body when it was unearthed. The bordered *dhoti* which was on the corpse belonged to Venkatakrishna Shastry. From these external marks, and the general features, friends of the deceased like P.Ws. 3 to 6 and 9 and P.W. 17 in whose house Shastry was living could say, we think, that the body buried in the waist-deep pit in the bed of the river was that of Venkatakrishna Shastry.

Whether he is regarded as an accomplice or as the sole witness of the offence P.W. 14 has been corroborated in such a manner that his evidence about the steps taken by the accused immediately prior to the perpetration of the murder carries conviction to our minds. The connection of the accused with the crime must be held to have been made out. We have also to accept that the dead body recovered was that of Venkatakrishna Shastry and no question of the absence of the body arises.

For this gruesome and revolting murder the appellants have got only imprisonment for life for which they must be thankful to the difference of opinion that arose among the learned Judges of the High Court.

The appeal fails and is dismissed.

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